

CHANGE REQUEST COVER SHEET

Change Request Number: 13-41

Date Received: 2/15/2013

Title: Organizational Code Change in Cooperative Agreements and Green Procurement

Name: Joshua Fletcher

Phone: 202-267-4267

Policy OR Guidance: Policy

Section/Text Location Affected: T3.6.3D2.12 , T3.8.1A2.h & T3.8.1D6.X.B

Summary of Change: AJA code to AAP, ACQ

Reason for Change: Change in organizational code.

Development, Review, and/or Concurrence: AAP-110

Target Audience: All AMS users

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: Approve

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace

Appendix

Section 2 : Appendix - FAA Green Procurement Plan [[Old Content](#)][[New Content](#)] [[RedLine Content](#)]

Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Agreements, Cooperative Agreements, Gifts and Bequests

Section 2 : Section 106 Cooperative Agreements [[Old Content](#)][[New Content](#)] [[RedLine Content](#)]

Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Appendix

Section 6 : Attachment 6 - Sample Section 106 Cooperative Agreement [[Old Content](#)][[New Content](#)] [[RedLine Content](#)]

SECTIONS EDITED:

Section 2 : Appendix - FAA Green Procurement Plan

Old Content: Procurement Guidance:

T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace Appendix

Section 2 : Appendix - FAA Green Procurement Plan

1. Purpose

a. The purpose of the Green Procurement Plan (GPP) is to enhance and sustain the FAA mission through cost-effective acquisition that complies with applicable requirements, reduces resource consumption, and minimizes waste generation. Green procurement is purchasing environmentally preferable products and services according to one or more of the established Federal “green” procurement preference requirements. This plan supplements requirements in the FAA Strategic Sustainability Performance Plan, FAA’s Acquisition Management System (AMS), and FAA Order 1050.10C, *Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities*.

b. FAA’s GPP supports acquiring products and services through the use of sustainable environmental practices, including procuring biobased, environmentally preferable, low or non-toxic, energy-efficient, water-efficient, and recycled-content products.

Below are goals, objectives, and sustainable practices that FAA’s GPP impacts either directly or indirectly:

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1.1. Sustainable Acquisition

Ensure that 95% of new contracts, task orders, and delivery orders for products and services are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmentally preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives when such products and services meet agency performance requirements, as applicable.

1.2. Pollution Prevention and Waste Reduction

- a. Reduce using chemicals and toxic materials and purchase lower risk chemicals and toxic materials;
- b. Minimize generating waste and pollutants through source reduction (i.e., purchasing less); and
- c. Reduce printing paper use and acquire uncoated printing and writing paper containing at least 30% post-consumer fiber.

1.3. Sustainable Buildings

- a. Construct or renovate buildings according to sustainability strategies, including resource conservation, reduction, use, siting and indoor environmental quality;
- b. Enhance indoor environmental quality through purchasing low-emitting materials; and
- c. Reduce environmental impact of materials and construction waste; purchase recycled-content, biobased and non-ozone-depleting products.

2. Roles and Responsibilities

This section outlines the roles and responsibilities in developing requirements for commodity purchases to meet GPP goals and objectives.

2.1. FAA Acquisition Executive (FAE)

The FAA Acquisition Executive (FAE) and associated staff are responsible for:

- a. Overseeing and facilitating implementation of FAA's GPP;
- b. Issuing procurement policies, guidance, and contract clauses and provisions consistent with green procurement requirements;
- c. Ensuring Contracting Officers conduct compliance monitoring for their contract's consistency with green procurement requirements, and assist in any necessary corrective actions; and

d. Reviewing contracts for quarterly data requests.

2.2. Office of Environment and Energy (AEE)

The Office of Environment and Energy (AEE), coordinating with the FAE, is responsible for:

- a. Facilitating environmental programs in the areas of acquisitions, facilities management, standards, waste prevention, recycling, and logistics activities as they relate to GPP;
- b. Distributing information on best practices through awareness and outreach programs to facilitate markets for environmentally preferable products, services, and new technologies;
- c. Facilitating and coordinating educational and promotional programs for agency employees and contractors, as appropriate;
- d. Promoting internally and externally FAA's GPP. This includes making recycled content suppliers aware of the FAA's preference program, educating program and acquisition offices about requirements to procure recycled content products, and providing FAA employees and contractors with information on sources of recycled products; and

The Office of Environment and Energy (AEE), in coordination with AFN Contracting Officers, is responsible for:

- e. Annually, the organizations will establish and document collaborative methods for setting, maintaining, and annually reviewing and updating objectives and targets for GPP performance that are appropriate for the nature and quantity of purchases made.

2.3. Contracting Officers

Contracting Officers (COs) are responsible for:

- a. Ensuring contractor and program office awareness of GPP requirements applicable to their contracts;
- b. Reviewing and approving the Request for Procurement Exemption, if required, and providing Life Cycle Cost Analysis assistance to the program offices, if necessary;
- c. Providing guidance and facilitating acquisition planning for environmentally preferable goods and services including those available through Federal sources;
- d. Assisting in any market research necessary to determine the availability of environmentally preferable good and services;
- e. Ensuring that solicitations and contracts contain the appropriate FAA AMS clauses and provisions;

- f. Ensuring contractual record keeping and reporting requirements for contractors and all subcontractors are incorporated into evaluation factors for contract award, if applicable;
- g. Ensuring all contract actions from development through award, execution, and close-out meet GPP requirements, when appropriate;
- h. Working with program offices to provide contractual green procurement data for compilation and distribution; and
- i. Maintaining required documents in the contract file to include estimates, certifications, and written justifications for exceptions when required.

2.4. Program Offices

Program offices (including requisitioners) are responsible for the following:

- a. Reviewing and revising procurement specifications or requirements during the planning phase of the acquisition to support FAA's procurement of environmentally preferable, energy- and water-efficient and recycled-content products. If the product or service involves the environmental attributes identified in Section 5. Environmental Attributes, then the specifications, and/or purchase requisition will be reviewed for conformance, and modified, as appropriate;
- b. Eliminating requirements for virgin materials, express preference for recovered materials to the maximum extent practicable, and maximize the purchase of products containing recovered material;
- c. Identifying and documenting whether recycled-content, biobased content, and energy- and water-efficient products, alternative fuel vehicles, and products containing non-ozone-depleting substances are not readily available;
- d. Determining if recycled-content and biobased products satisfy local requirements for price, availability, and performance and if FEMP-designated or ENERGY STAR® products are life-cycle cost effective and reasonably available;
- e. Consulting early in the procurement process with appropriate parties (e.g., environmental specialists, contracts specialist) to facilitate the process of procurement planning, including Life-Cycle Cost Analysis;
- f. Utilizing statements of work (SOWs) or specifications which eliminate virgin material requirements, promote the reuse of products, require the use of alternative fuels and alternative fueled vehicles, products containing recovered materials (e.g. U.S. Environmental Protection Agency (EPA) or U.S. Department of Agriculture (USDA)-designated products), products that are ENERGY STAR® or energy-efficient, products that are water-efficient, biobased products,

products that are environmentally preferable, low or non-toxic products, EPEAT-certified products, and non-ozone depleting products;

g. Preparing any Request for Procurement Exemption or justification documentation; and

h. Providing oversight of contract execution to ensure green procurement requirements are addressed in accordance with the terms of the contract.

3. Requirements

a. The scope of FAA's GPP covers all agency acquisitions, including purchase card transactions. The GPP applies to contractors that construct/operate FAA facilities (see circular).

b. The following requirements establish the framework for FAA's GPP:

1. Resource Conservation and Recovery Act (RCRA) Section 6002, as amended, (42 U.S.C. 6962)

2. Farm Security and Rural Investment Act (FSRIA) of 2002, Section 9002

3. The Energy Policy Act (EPA) of 2005

4. Food, Conservation, and Energy Act (FCEA) of 2008

5. Executive Order (EO) 13150, Federal Workforce Transportation

6. EO 13221, Energy Efficient Standby Power Devices

7. EO 13423, Strengthening Federal Environmental, Energy, and Transportation Management

8. Instructions for Implementing Executive Order 13423

9. EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance

10. 40 Code of Federal Regulations (CFR) Part 247, Comprehensive Procurement Guideline for Products Containing Recovered Materials

11. FAA's Acquisition Management System (AMS):

(i) Policy 4.8: Environmental, Occupational Safety and Health, and Energy Considerations

(ii) Policy 3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace

(iii) Guidance T3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace

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4. Implementation

FAA personnel involved in acquisitions will consider environmental and energy factors from requirement identification through the life-cycle acquisition process. This will enable FAA to reduce costs, improve efficiency, and reduce environmental impacts resulting from agency-procured products and services. Their actions will be consistent with the “waste management hierarchy:” reduce, reuse, and recycle, in that order.

5. Environmental Attributes

Through the acquisition process, the following environmental attributes should be considered, as a result of the potentially significant environmental impacts:

1. Alternative fuels and alternative fuel vehicles
2. Biobased products
3. Energy Star® and energy-efficient products
4. Environmentally preferable products
5. EPEAT-registered electronics
6. Priority Chemicals
7. Non-ozone depleting substances
8. Recovered material
9. Renewable energy
10. Water-efficient products
11. Use of green meetings and conferences

For additional information, see Section 13. Information Resources.

6. Federal Supply Sources

a. Established Federal supply sources, such as the SAVES Program, General Services Administration (GSA), Government Printing Office (GPO), Ability One Program, Defense General Supply Center (DGSC), and UNICOR are competitive sources for green products and services. Procuring environmentally preferable products and services through these sources offers the following advantages:

1. Products have been competitively bid;
2. Products meet or exceed EPA minimum content standards for recovered materials; and
3. Electronic catalogs identifying green products.

b. For items not available through federal supply sources, GPP requirements will be incorporated during the acquisition planning phase. In developing plans, drawings, statements of work, specifications or other product descriptions, Program Offices will consider the following factors: energy efficiency, elimination of virgin material requirements, use of recovered materials or biobased components, reuse of product, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including reduction or elimination of hazardous waste), and ultimate disposal.

7. Procurement Exemption

a. AMS Procurement Guidance T3.6.3A.7 requires 100 percent of purchases of EPA or USDA-designated items contain recycled content, unless the items:

1. Are not available competitively;
2. Are not available within a reasonable time frame;
3. Do not meet reasonable performance standards; or
4. Are only available at an unreasonable price.

b. The program office and/or CO as appropriate are responsible for documenting the decision not to buy recycled content products. The requisitioner is responsible for submitting a copy of the form to the responsible program manager. Written justification is not required for purchases below the threshold level of \$10,000.

8. Life-Cycle Cost Analysis

A life-cycle cost analysis, wherever feasible and appropriate, is used to assist in selecting products and services. Whenever possible, cost will be calculated applying life-cycle cost concepts to determine cost effectiveness of green alternatives over the life of the item, not just the initial, up-front cost. When comparing alternative products, the initial cost of the acquisition, as well as maintenance costs, installation costs, operational costs, and disposal costs over the lifetime of the product will be considered in the analysis. A product having a higher initial cost may have lower operational cost or a higher resale value and will, therefore, prove to be a better value and more cost-effective compared to the alternatives.

9. Promotion Program

FAA will promote the purchase of environmentally preferable products by:

- a. Including explicit recovered materials preference standards for EPA or USDA-designated items in appropriate specifications, solicitations and contract language; and
- b. Providing informational materials, vendor and product information, and training to program and procurement offices regarding FAA's recovered materials preference program through: electronic media such as FAA websites, memos, publications, newsletters, and at appropriate conferences, workshops, and meetings.

10. Procedures for Vendor Certification, Estimation, and Verification

COs should ensure that vendors (1) provide written certification that their products meet the minimum requirements in the solicitation documents; (2) maintain copies of certification documents; and (3) produce copies of the written certification upon request by the FAA. RCRA Section 6002 requires procuring agencies to obtain estimates and certifications of the recycled content in the products to be supplied under a contract, and to verify those estimates and certifications.

11. Compliance Monitoring

a. The Resource Conservation and Recovery Act of 1976 and the Farm Security and Rural Investment Act of 2002 require Federal agencies to establish affirmative procurement programs for purchasing EPA- and USDA-designated recycled content and biobased products, respectively. One required element of these programs is annual review and monitoring of the program (i.e., compliance monitoring).

b. FAA will review and evaluate the effectiveness of the GPP annually. FAA will take the actions to track its procurement of recycled content products consistent with AMS T3.6.3A.7.

See additional information on compliance monitoring options already in use within the federal government.

c. FAA will review new contracts, task orders, and delivery orders to ensure that, when applicable, 95% include products and services that are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmental preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives where such products and services meet agency performance requirements.

12. Data Tracking and Reporting

The FAA will establish compliance monitoring procedures, in accordance with Department of Transportation (DOT) specifications and Office of Management and Budget (OMB) scorecard requirements, to ensure that green purchasing activities are consistent and that data are accurate.

Corrective actions will be implemented, as necessary to improve the data quality that will be used in the OMB scorecard and annual reports. The FAA Procurement Policy Team (AJA-A11) will track the Agency's purchasing of items within the scope of this GPP, and report this information to AEE, at established intervals. AEE will report on FAA's compliance with requirements to review and revise specifications, product descriptions, and standards to enhance the procurement of environmentally preferable products.

13. Information Resources

- a. The Acquisition section of the Federal government's comprehensive environmental stewardship and compliance assistance Web site is the portal for federal green purchasing programs. This site provides links to, and highlights from programs which enable agencies to meet green procurement goals, including but not limited to: Environmentally Preferable Purchasing (EPP), Comprehensive Procurement Guidelines (CPG), the ENERGY STAR® Program, and FEMP.
- b. Routinely used government supply sources have green products, but these products must be sought and specifically requested. Products are available through supply catalogs published by the GSA and local contractors serving as AbilityOne Program distributors ().
- c. GSA offers a variety of environmental products and services to its Federal customers to assist them in their efforts to comply with procurement responsibilities outlined in federal environmental laws and regulations. Environmental products can be viewed and purchased from the GSAAAdvantage!® and GSA Global Supply online purchasing systems.
- d. EPA's Database of Environmental Information for Products and Services provides a quick reference guide to the various programs and products. The EPA database provides links to contract language, specifications, and policies; environmental standards and guidelines; vendor lists of product brands; and other useful sources of information (e.g., fact sheets, guidance, case studies).
- e. EPA maintains a list of designated recycled-content products and recommends the percentages of recycled content that the products must contain. Agencies can refer to EPA for a complete list of designated products, EPA's recommendations, and additional information.
- f. USDA designates biobased products and provides guidance to assist agency purchasing of these products.
- g. EPA's "Buying "Green" with the Government Credit Card" factsheet provides tips when using the government credit card that focus on buying products with recycled-content, buying products with reduced packaging; looking for the ENERGY STAR® label; asking if the product contains hazardous materials or toxic chemicals; and looking for other information on the environmental features of products.

h. Appendix B of OMB Circular A-123, Chapter 10 Environmental Requirements, prescribes policies and procedures to agencies regarding how to maintain internal controls that reduce the risk of fraud, waste, and error in government charge card programs. The requirement for compliance with OMB Circular A-123, Appendix B is contained in the Management Plan for the FAA Purchase Card Program.

i. EPA's ENERGY STAR® Program provides a current list of qualified products.

j. EPA Priority Pollutant List provides a current list of regulated chemical pollutants.

k. EPA information on resource conservation for construction and demolition.

l. FEMP products and requirements.

m. The EPA Acquisition Regulation (EPAAR) establishes policy and procedures for acquiring environmentally preferable meeting and conference services.

n. FedCenter provides a compilation of the products for which EPA, DOE, and USDA have provided environmental or energy attribute recommendations.

o. The Defense Logistics Agency (DLA) provides a catalog with environmental products.

14. Definitions

Alternative Fuel – Fuel defined by Section 301 of the Energy Policy Act of 1992, as modified periodically by the Secretary of Energy by rule.

Biobased Product – A product determined by the Secretary of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

Certification – Provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post-consumer materials and recovered material contained in the major constituents of the product. [US Environmental Protection Agency (EPA) Guidelines]

Comprehensive Procurement Guidelines – Regulations issued by EPA pursuant to Section 6002 of RCRA, as amended, (42 U.S.C. 6962) identifying items produced (or which can be produced) with recovered materials. [EO 13101 and Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Designated Item – A product or category of products designated by EPA in the Comprehensive Procurement Guideline and whose procurement by government agencies will help to create markets for materials recovered from solid waste.

Energy-Efficient or FEMP-designated Product – a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

ENERGY STAR® Product – A product that is rated for energy efficiency under an ENERGY STAR® Program established by Sec. 324A of the Energy Policy and Conservation Act.

Environmentally Preferable Products and Services – Products or services having a lesser or reduced effect on human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or product or service disposal.

Electronic Product Environmental Assessment Tool (EPEAT) – A procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

EPEAT-Registered Products – Products which meet the and Electrical Engineers (IEEE) 1680-2006 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this Policy Letter, and are listed on the EPEAT Product Registry located at www.epeat.net.

Green Hierarchy – The logical order by which waste prevention and effective environmental practices are applied.

Greenhouse Gases – Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Green Products/Services – Products and services meeting the requirements of one or more of the components of federal green procurement preference programs as defined in RCRA Section 6002; FSRIA (“Farm Bill”) section 9002; the Energy Policy Act of 2005 (EP Act 2005); and 13150; Electronic Stewardship requirements; and any federal Green Procurement Program implemented after the date of this document.

Life-Cycle Assessment – The comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

Life-Cycle Cost – The amortized annual cost of a product, including costs associated with capital, installation, operations, maintenance, and disposal, discounted over the lifetime of the product.

Ozone-depleting Substances – Any substance designated as a Class I or Class II substance by the Environmental Protection Agency in 40 CFR Part 82.

Postconsumer Material – A material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered materials.”

Preference – When two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product.

Procurement Preference Program – The first element of an agency affirmative procurement program, in which an agency expresses a preference for purchasing recycled content products designated by EPA. [Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Recovered Material – Waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recyclability – The ability of a product or material to be recovered or otherwise diverted from the solid waste stream for the purpose of recycling.

Recycled Material – A material utilized in place of raw or virgin material in product manufacturing (See “Recovered Material.”)

Recycling – The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use as raw materials in the manufacture of new products (other than fuel for producing heat or power by combustion).

Renewable Energy – Energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

Scope 1 – Direct greenhouse gas emissions from sources that are owned or controlled by the federal agency.

Scope 2 – Indirect greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by a federal agency.

Scope 3 – Indirect greenhouse gas emissions from sources not owned or directly controlled by a federal agency but related to agency activities such as vendor supply chains, delivery services, and employee travel and commuting.

Solid Waste – Garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This excludes solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flow, etc... [RCRA, Section 1004)

Specification – A clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials’ quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

Sustainable – To create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations.

Verification – Procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplied to them or to be used in the performance of a contract. [EPA Guidelines]

Virgin Material – A mined or harvested raw material to be used in manufacturing.

Waste Prevention – Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste Reduction – Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Water-Efficient Product or Service – A product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA’s WaterSense standards.

New Content: Procurement Guidance:

T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace

Appendix

Section 2 : Appendix - FAA Green Procurement Plan

1. Purpose

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- f. Utilizing statements of work (SOWs) or specifications which eliminate virgin material requirements, promote the reuse of products, require the use of alternative fuels and alternative fueled vehicles, products containing recovered materials (e.g. U.S. Environmental Protection Agency (EPA) or U.S. Department of Agriculture (USDA)-designated products), products that are ENERGY STAR® or energy-efficient, products that are water-efficient, biobased products, products that are environmentally preferable, low or non-toxic products, EPEAT-certified products, and non-ozone depleting products;
- g. Preparing any Request for Procurement Exemption or justification documentation; and
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9. EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance
10. 40 Code of Federal Regulations (CFR) Part 247, Comprehensive Procurement Guideline for Products Containing Recovered Materials
11. FAA's Acquisition Management System (AMS):
 - (i) Policy 4.8: Environmental, Occupational Safety and Health, and Energy Considerations
 - (ii) Policy 3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace
 - (iii) Guidance T3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace

4. Implementation

FAA personnel involved in acquisitions will consider environmental and energy factors from requirement identification through the life-cycle acquisition process. This will enable FAA to reduce costs, improve efficiency, and reduce environmental impacts resulting from agency-procured products and services. Their actions will be consistent with the "waste management hierarchy:" reduce, reuse, and recycle, in that order.

5. Environmental Attributes

Through the acquisition process, the following environmental attributes should be considered, as a result of the potentially significant environmental impacts:

1. Alternative fuels and alternative fuel vehicles
2. Biobased products
3. Energy Star® and energy-efficient products
4. Environmentally preferable products
5. EPEAT-registered electronics
6. Priority Chemicals
7. Non-ozone depleting substances

8. Recovered material
9. Renewable energy
10. Water-efficient products
11. Use of green meetings and conferences

For additional information, see Section 13. Information Resources.

6. Federal Supply Sources

a. Established Federal supply sources, such as the SAVES Program, General Services Administration (GSA), Government Printing Office (GPO), Ability One Program, Defense General Supply Center (DGSC), and UNICOR are competitive sources for green products and services. Procuring environmentally preferable products and services through these sources offers the following advantages:

1. Products have been competitively bid;
2. Products meet or exceed EPA minimum content standards for recovered materials; and
3. Electronic catalogs identifying green products.

b. For items not available through federal supply sources, GPP requirements will be incorporated during the acquisition planning phase. In developing plans, drawings, statements of work, specifications or other product descriptions, Program Offices will consider the following factors: energy efficiency, elimination of virgin material requirements, use of recovered materials or biobased components, reuse of product, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including reduction or elimination of hazardous waste), and ultimate disposal.

7. Procurement Exemption

a. AMS Procurement Guidance T3.6.3A.7 requires 100 percent of purchases of EPA or USDA-designated items contain recycled content, unless the items:

1. Are not available competitively;
2. Are not available within a reasonable time frame;
3. Do not meet reasonable performance standards; or
4. Are only available at an unreasonable price.

b. The program office and/or CO as appropriate are responsible for documenting the decision not to buy recycled content products. The requisitioner is responsible for submitting a copy of the form to the responsible program manager. Written justification is not required for purchases below the threshold level of \$10,000.

8. Life-Cycle Cost Analysis

A life-cycle cost analysis, wherever feasible and appropriate, is used to assist in selecting products and services. Whenever possible, cost will be calculated applying life-cycle cost concepts to determine cost effectiveness of green alternatives over the life of the item, not just the initial, up-front cost. When comparing alternative products, the initial cost of the acquisition, as well as maintenance costs, installation costs, operational costs, and disposal costs over the lifetime of the product will be considered in the analysis. A product having a higher initial cost may have lower operational cost or a higher resale value and will, therefore, prove to be a better value and more cost-effective compared to the alternatives.

9. Promotion Program

FAA will promote the purchase of environmentally preferable products by:

- a. Including explicit recovered materials preference standards for EPA or USDA-designated items in appropriate specifications, solicitations and contract language; and
- b. Providing informational materials, vendor and product information, and training to program and procurement offices regarding FAA's recovered materials preference program through: electronic media such as FAA websites, memos, publications, newsletters, and at appropriate conferences, workshops, and meetings.

10. Procedures for Vendor Certification, Estimation, and Verification

COs should ensure that vendors (1) provide written certification that their products meet the minimum requirements in the solicitation documents; (2) maintain copies of certification documents; and (3) produce copies of the written certification upon request by the FAA. RCRA Section 6002 requires procuring agencies to obtain estimates and certifications of the recycled content in the products to be supplied under a contract, and to verify those estimates and certifications.

11. Compliance Monitoring

- a. The Resource Conservation and Recovery Act of 1976 and the Farm Security and Rural Investment Act of 2002 require Federal agencies to establish affirmative procurement programs for purchasing EPA- and USDA-designated recycled content and biobased products, respectively. One required element of these programs is annual review and monitoring of the program (i.e., compliance monitoring).

b. FAA will review and evaluate the effectiveness of the GPP annually. FAA will take the actions to track its procurement of recycled content products consistent with AMS T3.6.3A.7.

See additional information on compliance monitoring options already in use within the federal government.

c. FAA will review new contracts, task orders, and delivery orders to ensure that, when applicable, 95% include products and services that are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmental preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives where such products and services meet agency performance requirements.

12. Data Tracking and Reporting

The FAA will establish compliance monitoring procedures, in accordance with Department of Transportation (DOT) specifications and Office of Management and Budget (OMB) scorecard requirements, to ensure that green purchasing activities are consistent and that data are accurate. Corrective actions will be implemented, as necessary to improve the data quality that will be used in the OMB scorecard and annual reports. The FAA Procurement Policy Team (AAP-110) will track the Agency's purchasing of items within the scope of this GPP, and report this information to AEE, at established intervals. AEE will report on FAA's compliance with requirements to review and revise specifications, product descriptions, and standards to enhance the procurement of environmentally preferable products.

13. Information Resources

a. The Acquisition section of the Federal government's comprehensive environmental stewardship and compliance assistance Web site is the portal for federal green purchasing programs. This site provides links to, and highlights from programs which enable agencies to meet green procurement goals, including but not limited to: Environmentally Preferable Purchasing (EPP), Comprehensive Procurement Guidelines (CPG), the ENERGY STAR® Program, and FEMP.

b. Routinely used government supply sources have green products, but these products must be sought and specifically requested. Products are available through supply catalogs published by the GSA and local contractors serving as AbilityOne Program distributors ().

c. GSA offers a variety of environmental products and services to its Federal customers to assist them in their efforts to comply with procurement responsibilities outlined in federal environmental laws and regulations. Environmental products can be viewed and purchased from the GSA Advantage!® and GSA Global Supply online purchasing systems.

d. EPA's Database of Environmental Information for Products and Services provides a quick reference guide to the various programs and products. The EPA database provides links to

contract language, specifications, and policies; environmental standards and guidelines; vendor lists of product brands; and other useful sources of information (e.g., fact sheets, guidance, case studies).

e. EPA maintains a list of designated recycled-content products and recommends the percentages of recycled content that the products must contain. Agencies can refer to EPA for a complete list of designated products, EPA's recommendations, and additional information.

f. USDA designates biobased products and provides guidance to assist agency purchasing of these products.

g. EPA's "Buying "Green" with the Government Credit Card" factsheet provides tips when using the government credit card that focus on buying products with recycled-content, buying products with reduced packaging; looking for the ENERGY STAR® label; asking if the product contains hazardous materials or toxic chemicals; and looking for other information on the environmental features of products.

h. Appendix B of OMB Circular A-123, Chapter 10 Environmental Requirements, prescribes policies and procedures to agencies regarding how to maintain internal controls that reduce the risk of fraud, waste, and error in government charge card programs. The requirement for compliance with OMB Circular A-123, Appendix B is contained in the Management Plan for the FAA Purchase Card Program.

i. EPA's ENERGY STAR® Program provides a current list of qualified products.

j. EPA Priority Pollutant List provides a current list of regulated chemical pollutants.

k. EPA information on resource conservation for construction and demolition.

l. FEMP products and requirements.

m. The EPA Acquisition Regulation (EPAAR) establishes policy and procedures for acquiring environmentally preferable meeting and conference services.

n. FedCenter provides a compilation of the products for which EPA, DOE, and USDA have provided environmental or energy attribute recommendations.

o. The Defense Logistics Agency (DLA) provides a catalog with environmental products.

14. Definitions

Alternative Fuel – Fuel defined by Section 301 of the Energy Policy Act of 1992, as modified periodically by the Secretary of Energy by rule.

Biobased Product – A product determined by the Secretary of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

Certification – Provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post-consumer materials and recovered material contained in the major constituents of the product. [US Environmental Protection Agency (EPA) Guidelines]

Comprehensive Procurement Guidelines – Regulations issued by EPA pursuant to Section 6002 of RCRA, as amended, (42 U.S.C. 6962) identifying items produced (or which can be produced) with recovered materials. [EO 13101 and Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Designated Item – A product or category of products designated by EPA in the Comprehensive Procurement Guideline and whose procurement by government agencies will help to create markets for materials recovered from solid waste.

Energy-Efficient or FEMP-designated Product – a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

ENERGY STAR® Product – A product that is rated for energy efficiency under an ENERGY STAR® Program established by Sec. 324A of the Energy Policy and Conservation Act.

Environmentally Preferable Products and Services – Products or services having a lesser or reduced effect on human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or product or service disposal.

Electronic Product Environmental Assessment Tool (EPEAT) – A procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

EPEAT-Registered Products – Products which meet the and Electrical Engineers (IEEE) 1680-2006 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this Policy Letter, and are listed on the EPEAT Product Registry located at www.epeat.net.

Green Hierarchy – The logical order by which waste prevention and effective environmental practices are applied.

Greenhouse Gases – Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Green Products/Services – Products and services meeting the requirements of one or more of the components of federal green procurement preference programs as defined in RCRA Section 6002; FSRIA (“Farm Bill”) section 9002; the Energy Policy Act of 2005 (EP Act 2005); and 13150; Electronic Stewardship requirements; and any federal Green Procurement Program implemented after the date of this document.

Life-Cycle Assessment – The comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

Life-Cycle Cost – The amortized annual cost of a product, including costs associated with capital, installation, operations, maintenance, and disposal, discounted over the lifetime of the product.

Ozone-depleting Substances – Any substance designated as a Class I or Class II substance by the Environmental Protection Agency in 40 CFR Part 82.

Postconsumer Material – A material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered materials.”

Preference – When two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product.

Procurement Preference Program – The first element of an agency affirmative procurement program, in which an agency expresses a preference for purchasing recycled content products designated by EPA. [Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Recovered Material – Waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recyclability – The ability of a product or material to be recovered or otherwise diverted from the solid waste stream for the purpose of recycling.

Recycled Material – A material utilized in place of raw or virgin material in product manufacturing (See “Recovered Material.”)

Recycling – The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use as raw materials in the manufacture of new products (other than fuel for producing heat or power by combustion).

Renewable Energy – Energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

Scope 1 – Direct greenhouse gas emissions from sources that are owned or controlled by the federal agency.

Scope 2 – Indirect greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by a federal agency.

Scope 3 – Indirect greenhouse gas emissions from sources not owned or directly controlled by a federal agency but related to agency activities such as vendor supply chains, delivery services, and employee travel and commuting.

Solid Waste – Garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This excludes solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flow, etc... [RCRA, Section 1004)

Specification – A clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

Sustainable – To create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations.

Verification – Procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplied to them or to be used in the performance of a contract. [EPA Guidelines]

Virgin Material – A mined or harvested raw material to be used in manufacturing.

Waste Prevention – Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste Reduction – Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Water-Efficient Product or Service – A product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA’s WaterSense standards.

Red Line Content: Procurement Guidance:

*T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace
Appendix*

Section 2 : Appendix - FAA Green Procurement Plan

1. Purpose

a. The purpose of the Green Procurement Plan (GPP) is to enhance and sustain the FAA mission through cost-effective acquisition that complies with applicable requirements, reduces resource consumption, and minimizes waste generation. Green procurement is purchasing environmentally preferable products and services according to one or more of the established Federal “green” procurement preference requirements. This plan supplements requirements in the FAA Strategic Sustainability Performance Plan, FAA’s Acquisition Management System (AMS), and FAA Order 1050.10C, *Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities*.

b. FAA’s GPP supports acquiring products and services through the use of sustainable environmental practices, including procuring biobased, environmentally preferable, low or non-toxic, energy-efficient, water-efficient, and recycled-content products.

Below are goals, objectives, and sustainable practices that FAA’s GPP impacts either directly or indirectly:

1.1. Sustainable Acquisition

Ensure that 95% of new contracts, task orders, and delivery orders for products and services are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmentally preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives when such products and services meet agency performance requirements, as applicable.

1.2. Pollution Prevention and Waste Reduction

a. Reduce using chemicals and toxic materials and purchase lower risk chemicals and toxic materials;

b. Minimize generating waste and pollutants through source reduction (i.e., purchasing less); and

c. Reduce printing paper use and acquire uncoated printing and writing paper containing at least 30% post-consumer fiber.

1.3. Sustainable Buildings

a. Construct or renovate buildings according to sustainability strategies, including resource conservation, reduction, use, siting and indoor environmental quality;

b. Enhance indoor environmental quality through purchasing low-emitting materials; and

c. Reduce environmental impact of materials and construction waste; purchase recycled-content, biobased and non-ozone-depleting products.

2. Roles and Responsibilities

This section outlines the roles and responsibilities in developing requirements for commodity purchases to meet GPP goals and objectives.

2.1. FAA Acquisition Executive (FAE)

The FAA Acquisition Executive (FAE) and associated staff are responsible for:

a. Overseeing and facilitating implementation of FAA's GPP;

b. Issuing procurement policies, guidance, and contract clauses and provisions consistent with green procurement requirements;

c. Ensuring Contracting Officers conduct compliance monitoring for their contract's consistency with green procurement requirements, and assist in any necessary corrective actions; and

d. Reviewing contracts for quarterly data requests.

2.2. Office of Environment and Energy (AEE)

The Office of Environment and Energy (AEE), coordinating with the FAE, is responsible for:

a. Facilitating environmental programs in the areas of acquisitions, facilities management, standards, waste prevention, recycling, and logistics activities as they relate to GPP;

b. Distributing information on best practices through awareness and outreach programs to facilitate markets for environmentally preferable products, services, and new technologies;

c. Facilitating and coordinating educational and promotional programs for agency employees and contractors, as appropriate;

d. Promoting internally and externally FAA's GPP. This includes making recycled content suppliers aware of the FAA's preference program, educating program and acquisition offices about requirements to procure recycled content products, and providing FAA employees and contractors with information on sources of recycled products; and

The Office of Environment and Energy (AEE), in coordination with AFN Contracting Officers, is responsible for:

e. Annually, the organizations will establish and document collaborative methods for setting, maintaining, and annually reviewing and updating objectives and targets for GPP performance that are appropriate for the nature and quantity of purchases made.

2.3. Contracting Officers

Contracting Officers (COs) are responsible for:

a. Ensuring contractor and program office awareness of GPP requirements applicable to their contracts;

b. Reviewing and approving the Request for Procurement Exemption, if required, and providing Life Cycle Cost Analysis assistance to the program offices, if necessary;

c. Providing guidance and facilitating acquisition planning for environmentally preferable goods and services including those available through Federal sources;

d. Assisting in any market research necessary to determine the availability of environmentally preferable good and services;

e. Ensuring that solicitations and contracts contain the appropriate FAA AMS clauses and provisions;

f. Ensuring contractual record keeping and reporting requirements for contractors and all subcontractors are incorporated into evaluation factors for contract award, if applicable;

g. Ensuring all contract actions from development through award, execution, and close-out meet GPP requirements, when appropriate;

h. Working with program offices to provide contractual green procurement data for compilation and distribution; and

i. Maintaining required documents in the contract file to include estimates, certifications, and written justifications for exceptions when required.

2.4. Program Offices

Program offices (including requisitioners) are responsible for the following:

- a. Reviewing and revising procurement specifications or requirements during the planning phase of the acquisition to support FAA's procurement of environmentally preferable, energy- and water-efficient and recycled-content products. If the product or service involves the environmental attributes identified in Section 5. Environmental Attributes, then the specifications, and/or purchase requisition will be reviewed for conformance, and modified, as appropriate;
- b. Eliminating requirements for virgin materials, express preference for recovered materials to the maximum extent practicable, and maximize the purchase of products containing recovered material;
- c. Identifying and documenting whether recycled-content, biobased content, and energy- and water-efficient products, alternative fuel vehicles, and products containing non-ozone-depleting substances are not readily available;
- d. Determining if recycled-content and biobased products satisfy local requirements for price, availability, and performance and if FEMP-designated or ENERGY STAR® products are life-cycle cost effective and reasonably available;
- e. Consulting early in the procurement process with appropriate parties (e.g., environmental specialists, contracts specialist) to facilitate the process of procurement planning, including Life-Cycle Cost Analysis;
- f. Utilizing statements of work (SOWs) or specifications which eliminate virgin material requirements, promote the reuse of products, require the use of alternative fuels and alternative fueled vehicles, products containing recovered materials (e.g. U.S. Environmental Protection Agency (EPA) or U.S. Department of Agriculture (USDA)-designated products), products that are ENERGY STAR® or energy-efficient, products that are water-efficient, biobased products, products that are environmentally preferable, low or non-toxic products, EPEAT-certified products, and non-ozone depleting products;
- g. Preparing any Request for Procurement Exemption or justification documentation; and
- h. Providing oversight of contract execution to ensure green procurement requirements are addressed in accordance with the terms of the contract.

3. Requirements

- a. The scope of FAA's GPP covers all agency acquisitions, including purchase card transactions. The GPP applies to contractors that construct/operate FAA facilities (see circular).
- b. The following requirements establish the framework for FAA's GPP:

1. Resource Conservation and Recovery Act (RCRA) Section 6002, as amended, (42 U.S.C. 6962)
2. Farm Security and Rural Investment Act (FSRIA) of 2002, Section 9002
3. The Energy Policy Act (EPA) of 2005
4. Food, Conservation, and Energy Act (FCEA) of 2008
5. Executive Order (EO) 13150, Federal Workforce Transportation
6. EO 13221, Energy Efficient Standby Power Devices
7. EO 13423, Strengthening Federal Environmental, Energy, and Transportation Management
8. Instructions for Implementing Executive Order 13423
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FAA personnel involved in acquisitions will consider environmental and energy factors from requirement identification through the life-cycle acquisition process. This will enable FAA to reduce costs, improve efficiency, and reduce environmental impacts resulting from agency-procured products and services. Their actions will be consistent with the "waste management hierarchy:" reduce, reuse, and recycle, in that order.

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Certification – Provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post-consumer materials and recovered material contained in the major constituents of the product. [US Environmental Protection Agency (EPA) Guidelines]

Comprehensive Procurement Guidelines – Regulations issued by EPA pursuant to Section 6002 of RCRA, as amended, (42 U.S.C. 6962) identifying items produced (or which can be produced) with recovered materials. [EO 13101 and Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Designated Item – A product or category of products designated by EPA in the Comprehensive Procurement Guideline and whose procurement by government agencies will help to create markets for materials recovered from solid waste.

Energy-Efficient or FEMP-designated Product – a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

ENERGY STAR® Product – A product that is rated for energy efficiency under an ENERGY STAR® Program established by Sec. 324A of the Energy Policy and Conservation Act.

Environmentally Preferable Products and Services – Products or services having a lesser or reduced effect on human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or product or service disposal.

Electronic Product Environmental Assessment Tool (EPEAT) – A procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

EPEAT-Registered Products – Products which meet the and Electrical Engineers (IEEE) 1680-2006 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this Policy Letter, and are listed on the EPEAT Product Registry located at www.epeat.net.

Green Hierarchy – The logical order by which waste prevention and effective environmental practices are applied.

Greenhouse Gases – Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Green Products/Services – Products and services meeting the requirements of one or more of the components of federal green procurement preference programs as defined in RCRA Section 6002; FSRIA (“Farm Bill”) section 9002; the Energy Policy Act of 2005 (EP Act 2005); and 13150; Electronic Stewardship requirements; and any federal Green Procurement Program implemented after the date of this document.

Life-Cycle Assessment – The comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

Life-Cycle Cost – The amortized annual cost of a product, including costs associated with capital, installation, operations, maintenance, and disposal, discounted over the lifetime of the product.

Ozone-depleting Substances – Any substance designated as a Class I or Class II substance by the Environmental Protection Agency in 40 CFR Part 82.

Postconsumer Material – A material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered materials.”

Preference – When two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product.

Procurement Preference Program – The first element of an agency affirmative procurement program, in which an agency expresses a preference for purchasing recycled content products designated by EPA. [Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

Recovered Material – Waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recyclability – The ability of a product or material to be recovered or otherwise diverted from the solid waste stream for the purpose of recycling.

Recycled Material – A material utilized in place of raw or virgin material in product manufacturing (See “Recovered Material.”)

Recycling – The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use as raw materials in the manufacture of new products (other than fuel for producing heat or power by combustion).

Renewable Energy – Energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

Scope 1 – Direct greenhouse gas emissions from sources that are owned or controlled by the federal agency.

Scope 2 – Indirect greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by a federal agency.

Scope 3 – Indirect greenhouse gas emissions from sources not owned or directly controlled by a federal agency but related to agency activities such as vendor supply chains, delivery services, and employee travel and commuting.

Solid Waste – Garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This excludes solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flow, etc... [RCRA, Section 1004)

Specification – A clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials’ quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

Sustainable – To create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations.

Verification – Procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplied to them or to be used in the performance of a contract. [EPA Guidelines]

Virgin Material – A mined or harvested raw material to be used in manufacturing.

Waste Prevention – Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste Reduction – Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Water-Efficient Product or Service – A product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA’s WaterSense standards.

Section 2 : Section 106 Cooperative Agreements

Old Content: Procurement Guidance:

*T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests
Agreements, Cooperative Agreements, Gifts and Bequests*

Section 2 : Section 106 Cooperative Agreements

a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. *Authority.*

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ...cooperative agreements...as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants*. Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. Definitions.

(1) *Cooperative Agreement*. A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant*. A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. Appropriations.

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Circulars.* Several OMB Circulars impose restrictions on projects funded with Federal funds. In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow the guidance of these circulars to the extent such standards are consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

(a) *Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."*

(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.

(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.

(b) *OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.* (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).

(c) *Allowable Costs.* The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. (a) *OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments,* (b) *OMB Circular A-122, Cost Principles for Non-profit Organizations,* excluding educational

institutions and other organizations specified in the circular, and (c) *OMB Circular A-21, Cost Principles for Educational Institutions*.

(d) *Treatment of Commercial Organizations*. The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.

e. *Content*. All cooperative agreements shall be in writing and should contain the following provisions: (Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,
- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,
- (7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,
- (8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,
- (9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,
- (10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,
- (11) FAA's right to audit for a stated period of time,
- (12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)
- (13) Small business opportunities,

(14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),

(15) Dispute resolution,

(16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

(1) Technical merit and program value,

(2) Cost/contribution of the parties,

(3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

(1) The purpose of the cooperative agreement,

(2) The expected benefit to the recipient and the general public,

(3) FAA's substantial involvement in performance of the activity, and

(4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive AJA-0, who is authorized to redelegate this authority, as appropriate.

New Content: Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests

Agreements, Cooperative Agreements, Gifts and Bequests

Section 2 : Section 106 Cooperative Agreements

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a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. *Authority.*

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ...cooperative agreements...as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants.* Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. *Definitions.*

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant.* A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Circulars.* Several OMB Circulars impose restrictions on projects funded with Federal funds. In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow the guidance of these circulars to the extent such standards are consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

(a) *Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."*

(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.

(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.

(b) *OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.* (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).

(c) *Allowable Costs.* The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. (a) *OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments,* (b) *OMB Circular A-122, Cost Principles for Non-profit Organizations,* excluding educational institutions and other organizations specified in the circular, and (c) *OMB Circular A-21, Cost Principles for Educational Institutions.*

(d) *Treatment of Commercial Organizations.* The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions: (Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,
- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,

(7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,

(8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,

(9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,

(10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,

(11) FAA's right to audit for a stated period of time,

(12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)

(13) Small business opportunities,

(14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),

(15) Dispute resolution,

(16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

(1) Technical merit and program value,

(2) Cost/contribution of the parties,

(3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

- (1) The purpose of the cooperative agreement,
- (2) The expected benefit to the recipient and the general public,
- (3) FAA's substantial involvement in performance of the activity, and
- (4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

Red Line Content: Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests

Agreements, Cooperative Agreements, Gifts and Bequests

Section 2 : Section 106 Cooperative Agreements

a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. *Authority.*

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ... cooperative agreements... as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants.* Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. *Definitions.*

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(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant.* A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than

FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Circulars.* Several OMB Circulars impose restrictions on projects funded with Federal funds. In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow the guidance of these circulars to the extent such standards are consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

(a) *Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."*

(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.

(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.

(b) *OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.* (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).

(c) *Allowable Costs.* The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. (a) *OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments,* (b) *OMB Circular A-122, Cost Principles for Non-profit Organizations,* excluding educational institutions and other organizations specified in the circular, and (c) *OMB Circular A-21, Cost Principles for Educational Institutions.*

(d) *Treatment of Commercial Organizations.* The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments,

organizations under the jurisdiction of foreign governments and international organizations.

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions: (Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,
- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,
- (7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,
- (8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,
- (9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,
- (10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,
- (11) FAA's right to audit for a stated period of time,
- (12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)
- (13) Small business opportunities,
- (14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),
- (15) Dispute resolution,

(16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

- (1) Technical merit and program value,
- (2) Cost/contribution of the parties,
- (3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

- (1) The purpose of the cooperative agreement,
- (2) The expected benefit to the recipient and the general public,
- (3) FAA's substantial involvement in performance of the activity, and
- (4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive [AJA\(ACQ-01\)](#), who is authorized to redelegate this authority, as appropriate.

Section 6 : Attachment 6 - Sample Section 106 Cooperative Agreement

Old Content: Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests

Appendix

Section 6 : Attachment 6 - Sample Section 106 Cooperative Agreement

**COOPERATIVE AGREEMENT
DTFAOI-98-C-00000**

**Between
ABC AIRLINES, INC.
and the
FEDERAL AVIATION ADMINISTRATION**

Cooperative Agreement Letter

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$XXXXXXXX

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

For ABC Airlines, Inc. For the FAA

Name Name

Date of Signature Date of Signature

COOPERATIVE AGREEMENT

DTFAOI-98-C-00000

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1. GENERAL PROVISIONS

A. Parties to the Agreement

The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

B. Effective Date and Milestones

The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:

Milestone Completion Date Responsibility

Sign Cooperative Agreement 4/98 FAA, Lead Carrier

Convene Initial CAMCOM N/A Lead Carrier

Submit CAPS Development Plan 1/98 Lead Carrier

Submit Initial Monthly Progress Rpt Lead Carrier*

Submit Initial Budget Rpt Lead Carrier*

Approve CAPS Development Plan 4/98 FAA

Commence All CAPS Installations 3/98 Lead Carrier

Complete All CAPS Installations Lead Carrier

Conduct Alpha Testing 1/98 Lead Carrier

Conduct Beta Testing 3/98 Lead Carrier

Commence Full Operations 7-98 Lead Carrier

** Monthly reports thereafter*

C. Authority

This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to

enter into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.

II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT

A. Background

During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening

(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.

B. Objectives

The objectives of this Agreement are to achieve:

- (1) Successful implementation of the basic CAPS program, as defined herein.*
- (2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

C. Scope

Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.

CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.

D. Coordination with Related Programs

The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.

III. CONTRIBUTIONS OF THE PARTIES

The contributions of the parties to this Agreement are as follows:

A. FAA Contributions

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1. Cash Contributions

The FAA will provide cash contribution to the Lead Carrier as shown below.

2. In-kind Contributions

The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:

3. Other Contributions

In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.

B. Lead Carrier Contributions

Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.

C. Limitation of Funds

Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.

D. Reimbursement of Costs

The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:

- *Fifty-percent (50%) of total amount \$xxxxxx.*
- *Fifty-percent (50%) of total amount \$xxxxxx.*

These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.

Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.

E. Selection of Alternatives

The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.

IV. TECHNICAL DIRECTION

The parties agree on the following organization and roles for management of this Agreement.

A. Management Structure

The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.

Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA."

B. FAA Role

The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.

V. REQUIRED SUBMISSIONS TO THE FAA

A. CAPS Functional Specification

Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead

Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.

B. CAPS Operational Readiness Plan

Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.

C. CAPS Quality Assurance Plan

Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.

D. CAPS Project Plan

Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.

E. CAPS Monthly Project Report

- *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- *Accomplishments for the past month against the project plan,*
- *Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*
- *Any updates to the CAPS Project Plans,*
- *Progress expected to be made in the upcoming month against the current Project Plan.*

F. Alpha Test Plan and Report

The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the

traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all

aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.

G. Beta Test Plan and Report

The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.

H. Verification of System/Software

Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.

I. Budget Report

The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or

category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.

Summary of Deliverables and Schedule:

CAPS Functional Specification 30 days after execution of Cooperative Agreement

CAPS Operational Readiness Plan 60 days after execution of Cooperative Agreement

CAPS Quality Assurance Plan 60 days after execution of Cooperative Agreement

CAPS Project Plan 30 days after execution of Cooperative Agreement

CAPS Monthly Project Report 5 days after end of month

Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Beta Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Verification of System/Software As requested

Budget Report 5 days after end of month

** "Days" as shown are calendar days.*

VI. INTELLECTUAL PROPERTY RIGHTS

The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.

A. Ownership Rights in Developed Technology

All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how", or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.

B. U.S. Government Rights in Developed Technology

The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA

nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.

C. Marking of Intellectual Property

Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.

D. Survival

The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.

E. Laws Governing Patents, Copyrights and Other Data Rights

All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.

F. Recoupment

The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.

VII. DISPUTE RESOLUTION

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.

VIII. TERM AND TERMINATION

The performance period of this Agreement is governed by the following stipulations.

A. Term

This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.

B. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

C. Return of Funds

In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.

D. Termination Settlement

In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.

IX. LIABILITY AND INDEMNIFICATION

Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA

will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.

Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement.

The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.

X. SPECIAL PROVISIONS

A. FAA Agreements Officer

The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.

B. Notices

Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:

If to Lead Carrier If to the FAA:

Project Manager Agreements Officer, ASU-300

Lead Carrier, ABC Airlines Federal Aviation Administration

Carrier Address 800 Independence Avenue, S.W

_____ *Washington, D.C. 20591*

Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.

C. Audit

The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.

Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.

Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.

D. Warranty

The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.

These warranty provisions shall survive termination or expiration of this Agreement.

E. Force Majeure

Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.

F. Security

The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.

Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.

G. Changes In Ownership

Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.

H. Lobbying Certification

Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating

compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier

Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.

I. Severability

In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.

J. Construction of Agreement

This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.

K. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

L. Amendments

This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.

M. Relationship Of Parties

The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.

N. Limitation of Assignment

Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.

0. Contracting By Lead Carrier

Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.

P. Third Party Participation

Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.

New Content: Procurement Guidance:

*T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests
Appendix*

Section 6 : Attachment 6 - Sample Section 106 Cooperative Agreement

**COOPERATIVE AGREEMENT
DTFAOI-98-C-00000
Between
ABC AIRLINES, INC.
and the
FEDERAL AVIATION ADMINISTRATION**

Cooperative Agreement Letter

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$XXXXXXXX

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

 For ABC Airlines, Inc. For the FAA

 Name Name

 Date of Signature Date of Signature

COOPERATIVE AGREEMENT

DTFAOI-98-C-00000

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1. GENERAL PROVISIONS

A. Parties to the Agreement

The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

B. Effective Date and Milestones

The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:

Milestone Completion Date Responsibility

Sign Cooperative Agreement 4/98 FAA, Lead Carrier

Convene Initial CAMCOM N/A Lead Carrier

Submit CAPS Development Plan 1/98 Lead Carrier

Submit Initial Monthly Progress Rpt Lead Carrier*

Submit Initial Budget Rpt Lead Carrier*

Approve CAPS Development Plan 4/98 FAA

Commence All CAPS Installations 3/98 Lead Carrier

Complete All CAPS Installations Lead Carrier

Conduct Alpha Testing 1/98 Lead Carrier

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Conduct Beta Testing 3/98 Lead Carrier

Commence Full Operations 7-98 Lead Carrier

** Monthly reports thereafter*

C. Authority

This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to enter into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.

II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT

A. Background

During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening

(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.

B. Objectives

The objectives of this Agreement are to achieve:

- (1) Successful implementation of the basic CAPS program, as defined herein.*
- (2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

C. Scope

Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.

CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.

D. Coordination with Related Programs

The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.

III. CONTRIBUTIONS OF THE PARTIES

The contributions of the parties to this Agreement are as follows:

A. FAA Contributions

1. Cash Contributions

The FAA will provide cash contribution to the Lead Carrier as shown below.

2. In-kind Contributions

The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:

3. Other Contributions

In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.

B. Lead Carrier Contributions

Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.

C. Limitation of Funds

Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.

D. Reimbursement of Costs

The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:

- Fifty-percent (50%) of total amount \$xxxxxx.*
- Fifty-percent (50%) of total amount \$xxxxxx.*

These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.

Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.

E. Selection of Alternatives

The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.

IV. TECHNICAL DIRECTION

The parties agree on the following organization and roles for management of this Agreement.

A. Management Structure

The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.

Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA."

B. FAA Role

The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.

V. REQUIRED SUBMISSIONS TO THE FAA

A. CAPS Functional Specification

Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead

Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.

B. CAPS Operational Readiness Plan

Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.

C. CAPS Quality Assurance Plan

Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the

quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.

D. CAPS Project Plan

Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.

E. CAPS Monthly Project Report

- *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- *Accomplishments for the past month against the project plan,*
- *Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*
- *Any updates to the CAPS Project Plans,*
- *Progress expected to be made in the upcoming month against the current Project Plan.*

F. Alpha Test Plan and Report

The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all

aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.

G. Beta Test Plan and Report

The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known

inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.

H. Verification of System/Software

Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.

I. Budget Report

The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.

Summary of Deliverables and Schedule:

CAPS Functional Specification 30 days after execution of Cooperative Agreement

CAPS Operational Readiness Plan 60 days after execution of Cooperative Agreement

CAPS Quality Assurance Plan 60 days after execution of Cooperative Agreement

CAPS Project Plan 30 days after execution of Cooperative Agreement

CAPS Monthly Project Report 5 days after end of month

Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Beta Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Verification of System/Software As requested

Budget Report 5 days after end of month

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* "Days" as shown are calendar days.

VI. INTELLECTUAL PROPERTY RIGHTS

The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.

A. Ownership Rights in Developed Technology

All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how", or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.

B. U.S. Government Rights in Developed Technology

The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.

C. Marking of Intellectual Property

Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.

D. Survival

The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.

E. Laws Governing Patents, Copyrights and Other Data Rights

All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.

F. Recoupment

The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.

VII. DISPUTE RESOLUTION

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.

VIII. TERM AND TERMINATION

The performance period of this Agreement is governed by the following stipulations.

A. Term

This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.

B. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

C. Return of Funds

In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and

Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.

D. Termination Settlement

In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.

IX. LIABILITY AND INDEMNIFICATION

Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA

will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.

Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.

X. SPECIAL PROVISIONS

A. FAA Agreements Officer

The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.

B. Notices

Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:

*If to Lead Carrier If to the FAA:
Project Manager Agreements Officer
Lead Carrier, ABC Airlines Federal Aviation Administration
Carrier Address 800 Independence Avenue, S.W*

Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.

C. Audit

The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.

Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.

Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.

D. Warranty

The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.

These warranty provisions shall survive termination or expiration of this Agreement.

E. Force Majeure

Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.

F. Security

The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.

Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.

G. Changes In Ownership

Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.

H. Lobbying Certification

Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier

Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.

I. Severability

In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.

J. Construction of Agreement

This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.

K. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

L. Amendments

This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.

M. Relationship Of Parties

The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.

N. Limitation of Assignment

Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.

O. Contracting By Lead Carrier

Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.

P. Third Party Participation

Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.

Red Line Content: Procurement Guidance:

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests

Appendix

Section 6 : Attachment 6 - Sample Section 106 Cooperative Agreement

COOPERATIVE AGREEMENT
DTFAOI-98-C-00000
Between
ABC AIRLINES, INC.
and the
FEDERAL AVIATION ADMINISTRATION

Cooperative Agreement Letter

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAOI - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$xxxxxxx

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

For ABC Airlines, Inc. For the FAA

Name Name

Date of Signature Date of Signature

COOPERATIVE AGREEMENT

DTFAOI-98-C-00000

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1. GENERAL PROVISIONS

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The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

B. Effective Date and Milestones

The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:

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Submit Initial Budget Rpt Lead Carrier*

Approve CAPS Development Plan 4/98 FAA

Commence All CAPS Installations 3/98 Lead Carrier

Complete All CAPS Installations Lead Carrier

Conduct Alpha Testing 1/98 Lead Carrier

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Commence Full Operations 7-98 Lead Carrier

** Monthly reports thereafter*

C. Authority

This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to

enter into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.

II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT

A. Background

During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening

(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.

B. Objectives

The objectives of this Agreement are to achieve:

- (1) Successful implementation of the basic CAPS program, as defined herein.*
- (2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

C. Scope

Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.

CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.

D. Coordination with Related Programs

The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.

III. CONTRIBUTIONS OF THE PARTIES

The contributions of the parties to this Agreement are as follows:

A. FAA Contributions

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1. Cash Contributions

The FAA will provide cash contribution to the Lead Carrier as shown below.

2. In-kind Contributions

The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:

3. Other Contributions

In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.

B. Lead Carrier Contributions

Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.

C. Limitation of Funds

Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.

D. Reimbursement of Costs

The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:

- *Fifty-percent (50%) of total amount \$xxxxxx.*
- *Fifty-percent (50%) of total amount \$xxxxxx.*

These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.

Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.

E. Selection of Alternatives

The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.

IV. TECHNICAL DIRECTION

The parties agree on the following organization and roles for management of this Agreement.

A. Management Structure

The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.

Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA."

B. FAA Role

The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.

V. REQUIRED SUBMISSIONS TO THE FAA

A. CAPS Functional Specification

Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead

Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.

B. CAPS Operational Readiness Plan

Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.

C. CAPS Quality Assurance Plan

Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.

D. CAPS Project Plan

Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.

E. CAPS Monthly Project Report

- *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- *Accomplishments for the past month against the project plan,*
- *Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*
- *Any updates to the CAPS Project Plans,*
- *Progress expected to be made in the upcoming month against the current Project Plan.*

F. Alpha Test Plan and Report

The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the

traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all

aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.

G. Beta Test Plan and Report

The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.

H. Verification of System/Software

Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.

I. Budget Report

The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or

category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.

Summary of Deliverables and Schedule:

CAPS Functional Specification 30 days after execution of Cooperative Agreement

CAPS Operational Readiness Plan 60 days after execution of Cooperative Agreement

CAPS Quality Assurance Plan 60 days after execution of Cooperative Agreement

CAPS Project Plan 30 days after execution of Cooperative Agreement

CAPS Monthly Project Report 5 days after end of month

Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Beta Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Verification of System/Software As requested

Budget Report 5 days after end of month

** "Days" as shown are calendar days.*

VI. INTELLECTUAL PROPERTY RIGHTS

The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.

A. Ownership Rights in Developed Technology

All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how", or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.

B. U.S. Government Rights in Developed Technology

The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA

nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.

C. Marking of Intellectual Property

Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.

D. Survival

The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.

E. Laws Governing Patents, Copyrights and Other Data Rights

All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.

F. Recoupment

The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.

VII. DISPUTE RESOLUTION

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.

VIII. TERM AND TERMINATION

The performance period of this Agreement is governed by the following stipulations.

A. Term

This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.

B. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

C. Return of Funds

In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.

D. Termination Settlement

In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.

IX. LIABILITY AND INDEMNIFICATION

Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA

will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.

Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement.

The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.

X. SPECIAL PROVISIONS

A. FAA Agreements Officer

The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.

B. Notices

Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:

If to Lead Carrier If to the FAA:

Project Manager Agreements Officer, [ASU-300](#)

Lead Carrier, ABC Airlines Federal Aviation Administration

Carrier Address 800 Independence Avenue, S.W

_____ Washington, D.C. 20591

Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.

C. Audit

The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.

Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.

Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.

D. Warranty

The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.

These warranty provisions shall survive termination or expiration of this Agreement.

E. Force Majeure

Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.

F. Security

The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.

Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.

G. Changes In Ownership

Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.

H. Lobbying Certification

Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating

compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier

Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.

I. Severability

In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.

J. Construction of Agreement

This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.

K. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

L. Amendments

This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.

M. Relationship Of Parties

The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.

N. Limitation of Assignment

Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.

0. Contracting By Lead Carrier

Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.

P. Third Party Participation

Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.
